

STATE REVIEW FRAMEWORK

Alaska

Clean Water Act Implementation in Federal Fiscal Year 2012

**U.S. Environmental Protection Agency
Region 10, Seattle**

**Draft Report
March 31, 2014**

Executive Summary

(NOTE: This draft report is only for DEC's APDES program; the draft report for DEC's CAA program was sent at a previous time.)

Introduction

EPA Region 10 conducted a State Review Framework (SRF) oversight review of the Alaska Department of Environmental Conservation's (DEC) implementation of its compliance and enforcement program for the Alaska Pollutant Discharge Elimination System (APDES).

EPA Region 10 approved DEC's APDES program in October 2008. EPA Region 10 transferred the NPDES program to DEC's APDES program in four phases over five years (2008-2012). The Phase IV transfer, the final phase covering the NPDES oil and gas sector, was completed at the beginning of federal fiscal year (FY) 2013. Because the primary year reviewed in this report is FY 2012, Region 10 did not include oil and gas facilities in the review.

This SRF oversight review is the first SRF review of the DEC APDES compliance and enforcement program. Accordingly, the oversight review included evaluations of DEC's initial and ongoing APDES program commitments as part of its transition to the fully approved state NPDES program.

EPA Region 10 reviewed the DEC APDES compliance and enforcement program to help improve DEC's ongoing operations, and to provide feedback and insights that may prove helpful in the transition and in DEC's ramp up to a fully implemented, vigorous APDES compliance and enforcement program.

EPA bases these SRF findings on multiple data sources, including data and file review metrics, DEC data submission and reports, DEC APDES program commitments and conversations with DEC management and staff. EPA will track recommended and corrective actions from the review in the SRF Tracker and publish reports and recommendations on EPA's Enforcement and Compliance History Online (ECHO) web site.

Note, the terms State and DEC are used interchangeably in this report and its appendices.

Areas of Strong Performance

- **Finding 1-2:** DEC exceeded expectations for APDES data entry rates regarding discharge monitoring report data for major facilities.

Priority Issues to Address

The SRF review revealed a number of significant deficiencies in the APDES compliance and enforcement program. The breadth and depth of the problems will necessitate a number of follow up corrective actions to bring the State's program in line with national expectations and

requirements for an authorized state program. The following are the top-priority issues affecting the DEC APDES compliance and enforcement program's performance:

- **Findings 2-1, 2-2 and 2-3:** DEC inspection coverage measures for APDES major and non-major facilities are substantially below State and federal goals.
- **Finding 4-1:** DEC does not consistently take timely or appropriate enforcement actions.
- **Finding 5-1:** DEC does not complete a sufficient number of formal penalty actions to form a minimum SRF data set for a detailed evaluation of DEC's penalty development and settlement procedures and processes.
- **Finding 2-4:** DEC has performance issues adhering to and completing various APDES program commitments that are integral to the establishment and implementation of a vigorous compliance and enforcement program and to EPA's ability to conduct effective oversight of the DEC APDES compliance and enforcement program. These deficiencies include: the lack of a statewide pretreatment survey, guidance and standard operating procedures related to compliance evaluations of major facilities, management of data, how DEC and the Department of Law will coordinate on cases, and cross training internally within DEC and with external State and Federal Agencies to meet program commitments.

Actions to Address Priority Issues

To address these priority issues, EPA Region 10 has identified the following actions that ADEC must take:

- Develop an **Inspection Resource Analysis** to identify personnel, training, and other resources needed to meet compliance monitoring/inspection requirements.
- Conduct a **Statewide Pretreatment Survey** of significant industrial users (SIU)
- Develop and implement a comprehensive **Program Improvement Plan** to address areas needing state improvement, as detailed in the body of this report.
- Evaluate and implement improved **standard operating procedures** to meet goals for timely and appropriate enforcement
- Meet near term **performance benchmarks**, including completion of approximately 10 formal enforcement actions currently in DEC's pipeline by January 1, 2015 and conduct 200 inspections in 2015.

EPA Region 10 will continue to work closely with DEC as the State carries out these actions to assist, inform and provide guidance. EPA realizes that DEC must prioritize efforts among development of procedures, guidance, analyses etc. while continuing to carry out inspection and enforcement responsibilities. The overall Program Improvement Plan provides a mechanism for laying out priorities and deadlines. In addition, EPA will continue to perform inspections and enforcement activity in Alaska.

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I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** — meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection
- **Completion of Commitments** — completion of work products and commitments in other relevant agreements or documents, e.g. program descriptions, performance partnership agreements, memoranda of agreements, etc.

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics and information related to completion of commitments
- Reviewing facility files and compiling file metrics
- Development of findings, recommendations and corrective actions

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on recommendations and corrective actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are typically reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016. As noted, this is the first SRF review of the DEC APDES compliance and enforcement program.

II. SRF Review Process

Review period: Fiscal Year 2012

Key dates:

June 4, 2013 – Overall Kick-Off Letter sent to State
June 20, 2013 - Initial Data Metric Analysis (DMA) and File Selection sent to State
July 15-18, 2013 – EPA conducted an onsite file review in Anchorage.

State and EPA key contacts for review:

Sharon Morgan, DEC, Water Quality Program Manager
Charles Knapp, DEC, Compliance and Enforcement Program Manager
Rick Cool, EPA-R10, Lead Reviewer for APDES
Robert Grandinetti, EPA-R10, Assistant Reviewer for APDES
Jeff Kenknight, EPA-R10 NPDES Compliance Unit Manager
Christine Kelly, EPA-R10 SRF Coordinator
Lauris Davies, EPA-R10 OCE Associate Director

Review process: The SRF review process typically focuses on facility file evaluations, completion of commitments and reviews of data metrics from national data systems. This SRF review was the first SRF review of the DEC APDES compliance and enforcement program and DEC did not have full administrative and implementation authority over all APDES sectors in federal fiscal year 2012, the primary year reviewed in this report.

EPA Region 10 approved DEC's APDES program in October, 2008. EPA Region 10 transferred the NPDES program to the APDES program in four phases over five years (2008-2012). Phase I (e.g., domestic discharges, timber harvesting and seafood processing sectors) was transferred in October 2008. Phase II (e.g., stormwater program, pretreatment and federal facilities) was transferred in October 2009. Phase III (mining sector) was transferred in October 2010. Finally, Phase IV (e.g., oil and gas sector) was transferred in October 2012.

In light of this relatively new APDES program and its phased program implementation, this SRF review includes evaluations of various DEC APDES program commitments that are integral and foundational bases of a comprehensive DEC APDES program framework and that affect EPA's ability to conduct effective oversight.

The most significant APDES program issues identified in this SRF review process were discussed with DEC prior to the SRF FY 2012 review period. For example, in February 2010,

EPA met with DEC to raise concerns about DEC's Phase I inspection coverage rates and DEC's procedures for initiating formal enforcement actions. This joint meeting was held to discuss the timing of the Phase III and IV transfers. EPA also discussed the SRF process during this meeting. These issues and related matters were discussed between EPA and DEC in subsequent routine conference calls and periodic face-to-face meetings.

As context for implementation of SRF recommendations and corrective actions developed through this SRF review process, EPA's Clean Water Act (CWA) Action Plan includes efforts to build robust and credible regional and state compliance and enforcement programs, and to ensure consistent enforcement actions across states to maintain a fair and level playing field for the regulated community and the public.

DEC's increased efforts to implement SRF recommendations and corrective actions as a means to build a rigorous and credible APDES compliance and enforcement programs in Alaska is particularly critical at this time. The EPA Office of Inspector General's (OIG) report, *EPA Must Improve Oversight of State Enforcement*, (Report No. 12-P-0113, December 9, 2011), found the CWA enforcement programs in Alaska were underperforming. The OIG report found that EPA actions to date had not brought about improved performance in the DEC compliance and enforcement program. In response to the CWA Action Plan, the OIG report and this SRF review process, EPA and DEC will prioritize SRF recommendation efforts and use all available mechanisms to improve the performance of their compliance and enforcement program.

Frozen OTIS data and State verification process: The SRF review was complicated by a frozen OTIS data set and metrics analysis that contained Phase IV oil and gas facilities that were not under DEC authority or administration in FY 2012 as well as other non-applicable data, and did not include other mandatory data. The State's evaluation and verification process of the pre-frozen OTIS data set did not identify and correct significant data anomalies (e.g., inclusion of inapplicable permits within pre-frozen OTIS universes and counts, missing completed inspection data) that affected the subsequent frozen OTIS data metrics analyses. In an effort to promote accurate findings, EPA re-calculated applicable metrics using corrected universe and count data (e.g. eliminating Phase IV facilities). This report includes original and re-calculated data set information

III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on findings made during the data and/or file reviews and are also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the state is required to address. Recommendations and corrective actions should address root causes. These recommendations and corrective actions must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric if directly applicable to the particular element, sub-element and finding:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Water Act Findings

Element 1 — Data: Files and Data Bases Where Data Are Accurately Reflected in National Data Systems

Finding 1-1	Area for State Improvement																	
Summary	The State does not meet the national goal for files and data bases where the mandatory data is accurately reflected in the national data system.																	
Explanation	<p>Finding 1-1 focuses on Metric 2b, data accuracy within the national data system.</p> <p>In regard to Metric 2b and for seven of the 28 files reviewed, the mandatory data were not accurately reflected in OTIS, the national data system. For example, data inaccuracies included entries not reflecting receipt of discharge monitoring reports (DMRs), incorrect facility address and an incorrect date of an informal enforcement action.</p> <p>Metrics 5a1, 5b1, 5b2, 7d1, 7f1, 7h1, and 8a2 address data related to inspections and violations. The frozen OTIS universes and counts contained inapplicable facilities and omitted inspection data.</p>																	
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>2b Files reviewed where data are accurately reflected in the national data system</td><td>100%</td><td>----</td><td>21</td><td>28</td><td>75%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Files reviewed where data are accurately reflected in the national data system	100%	----	21	28	75%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
2b Files reviewed where data are accurately reflected in the national data system	100%	----	21	28	75%													
State Response																		
Recommendation	<p><u>Program Improvement Plan – Appendix A</u> DEC will develop a comprehensive Program Improvement Plan (PIP), as described in detail in Appendix A, to address specific identified findings for State Improvement in this Report. Specific to Finding 1-1, as part of the PIP, DEC will identify and implement the action items, tasks, timelines and critical path schedules to address accuracy and completeness of mandatory data entries into the national data system and for ensuring careful reviews and evaluations of data entered into ICIS and used for data metrics analyses. DEC shall submit the completed PIP to EPA for review and comment within 60 days of the finalization date of this SRF report.</p>																	

Element 1 — Data: Completeness of Data Entry on Major Permit Limits and Discharge Monitoring Reports (DMRs)

Finding 1-2	Meets or Exceeds Expectations																						
Summary	The State meets expectations regarding completeness of permit limit data entry for major facilities (Metric 1b1) and exceeds expectations regarding completeness of discharge monitoring report data entry rates for major facilities (Metric 1b2).																						
Explanation	<p>Finding 1-2 focuses on Metrics 1b1 and 1b2, the completeness of data entry on major permit limits and discharge monitoring reports (DMRs).</p> <p>The frozen OTIS universe derived from ICIS-NPDES contained seven Phase IV facilities that were not administered by the State in FY 2012. . Excluding these seven Phase IV, the corrected Metric 1b1 is 89.7%. The 89.7% rate is approximately 94.4% of the minimum national goal of 95%.</p> <p>A similar correction to Metric 1b2 was made (i.e. removal of the Phase IV facilities) but because the State entered all received DMRs, the State still had a 100% rate for DMR entry for major facilities.</p>																						
Relevant metrics	<table> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> <tr> <td>1b1 Permit limit rate for major facilities</td><td>>95%</td><td>98.3%</td><td>26</td><td>29</td><td>89.7%</td></tr> <tr> <td>1b2 DMR entry rate for major facilities</td><td>>95%</td><td>97.9%</td><td>723</td><td>723</td><td>100%</td></tr> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1 Permit limit rate for major facilities	>95%	98.3%	26	29	89.7%	1b2 DMR entry rate for major facilities	>95%	97.9%	723	723	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																		
1b1 Permit limit rate for major facilities	>95%	98.3%	26	29	89.7%																		
1b2 DMR entry rate for major facilities	>95%	97.9%	723	723	100%																		
State Response																							
Recommendation	Not applicable.																						

Element 2 — Inspection Commitments: Inspection Coverage of NPDES Major Facilities

Finding 2-1	Area for State Improvement
Summary	<p>The State’s inspection coverage measure for NPDES major facilities under individual and general permits is substantially below the State’s APDES Program Description commitment and EPA and State Compliance Monitoring Strategy (CMS) goals.</p>
Explanation	<p>Finding 2-1 focuses on Metric 5a1, inspection coverage of NPDES major facilities under individual and general permits.</p> <p>In 2008, the State committed to inspect annually all facilities classified as a major discharger, whether covered under an individual or general permit. <i>See State’s Amended Final [APDES] Program Application</i> (approved 2008), APDES Program Description (Final Oct. 29, 2008), Section 9.1.3.</p> <p>In 2007, EPA revised the national goal for the major facility inspection measure to ensure one comprehensive inspection of every major facility every two years. DEC’s CMS annual inspection plan submissions for CYs 2010, 2011 and 2012 adopted the revised national goal of an inspection of a major facility once every two years.</p> <p>Row A below reflects the State’s measure based on the uncorrected frozen OTIS data. Row B reflects the correction to eliminate 10 Phase IV facilities from the universe. Rows A and B reflect inspection coverage rates for FY 2012 using only the frozen OTIS data.</p> <p>DEC implements its CMS inspection plan on a calendar year basis, not a federal fiscal year. Accordingly, an evaluation of the State’s recent annual inspection coverages provides additional context for the FY 2012 coverage measure. Available data indicate that the State has not inspected major facilities under its administrative authority every year or at least once every other year during the CY 2010-2012 time period.</p> <p>Row C represents the two-year, CYs 2011-2012 measure of 67.4% based on DEC submissions. Based on an ICIS data pull, the CYs 2011-2012 measure was 39.1%. Row D represents the two-year, CYs 2010-2011 measure of 50% based on DEC submissions.</p> <p>Based on information from DEC, the causes of inspection coverage deficiencies in Findings 2-1, 2-2 and 2-3 include, in part, the lack of an adequate number of trained inspectors to reliably meet DEC’s Program Description inspection frequency commitments and the EPA/DEC CMS goals. DEC has also asserted, in CMS submissions, that inspection travel</p>

Relevant metrics	budgets negatively affect its ability to complete inspection coverage meeting CMS goals.					
	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	A: 5a1 Inspection coverage of NPDES majors – Frozen OTIS Data – FY 2012 Only	---	57.6%	12	58	20.7%
	B: 5a1 Inspection coverage of NPDES majors – Corrected Frozen OTIS Data – FY 2012 Only	---	57.6%	12	48	25.0%
	C: 5a1 Inspection coverage of NPDES majors – CYs 2011-2012 – DEC Submissions	100%	---	31	46	67.4%
	E: 5a1 Inspection coverage of NPDES majors – CYs 2010-2011 – DEC Submissions	100%	---	19	38	50%
State Response						
Recommendation	<p>The recommendations for Findings 2-1, 2-2 and 2-3 (partially) are combined and addressed in the recommendations below</p> <p>DEC must obtain and mobilize additional APDES compliance and enforcement program inspection resources to meet DEC and EPA NPDES CMS goals and DEC Program Description commitments.</p> <p><u>Inspection Resources Analysis & Plan.</u> The State will conduct an APDES inspection resources analysis and prepare and implement a plan to identify and obtain the APDES compliance and enforcement program staff resources (i.e., additional full time employee equivalents (FTEs)) and supporting resources (e.g., inspection travel budgets) that are needed to meet EPA NPDES CMS inspection goals for all APDES facility sectors. The plan should aim to have these resources mobilized to implement post-CY 2014 APDES inspection plans and to meet DEC Program Description commitments. Appendix B contains the inspection resources analysis and plan elements and details. DEC will submit a final analysis report/plan to EPA by August 1, 2014.</p> <p><u>Post CY 2014 Inspection Plans.</u> Except as noted herein for the CY 2015 CMS inspection plan, the State will submit annual inspection plans after CY 2014 that meet all EPA NPDES CMS goals and DEC Program Description commitments for all APDES facility sectors. DEC must begin ramping up and mobilizing additional inspection resources as it completes and implements the Inspection Resource Analysis and Plan. As an interim step, DEC must complete at least 200 inspections in CY 2015, and include the goal of 200 inspections in its CY 2015 CMS inspection plan.</p> <p>For Findings 2-1, 2-2 and 2-3, EPA will monitor implementation of the</p>					

DEC's annual CMS and inspection plans and the inspection resources analysis final report and plan's implementation. EPA will also monitor DEC's inspection coverage results against EPA CMS goals and annual CMS inspection plans, and DEC's annual data metrics analyses. EPA will continue to conduct lead inspections in the State.

Element 2 — Inspection Commitments: Inspection Coverage of NPDES Non-Major Facilities Excluding Facilities Covered Under Metrics 4a1 – 4a11.

Finding 2-2	Area for State Improvement
Summary	The State’s inspection coverage measures for NPDES non-major facilities are substantially below the State’s APDES Program Description commitment and EPA and State CMS goals.
Explanation	<p>Finding 2-2 focuses on Metrics 5b1 and 5b2, inspection coverage of NPDES non-major facilities (excluding non-major facilities covered under Metrics 4a1 – 4a11).</p> <p>As part of the State’s Amended Final [APDES] Program Application (approved 2008) , the State committed to inspect all facilities classified as a minor discharger with an individual or general permit at least once every five years. DEC’s CY 2010-2013 CMS inspection plans adopt the national goal of inspecting traditional minor facilities at least once every five years. Except as noted below, DEC’s annual CMS submissions typically adopt an interim annual inspection goal of 20% of the specific traditional minor sector’s universe (i.e. 20% per year reflecting the once-every-five-year cumulative or multi-year goal).</p> <p>Rows A and C below reflect Metrics 5b1 and 5b2 measures respectively based on the uncorrected frozen OTIS data. Rows B and D reflect similar data corrected to eliminate inapplicable facilities.</p> <p>DEC’s CY 2011 and 2012 CMS submissions did not include an interim 20% annual inspection goal for minor placer mine facilities. DEC asserted that an inspection plan meeting the 20% goal for just <i>active</i> operations would add a minimum of 200 inspections per year and would require a substantial increased personnel and travel dollars. The CY 2011 and 2012 CMSs proposed the completion of five and 15 inspections respectively. DEC’s CY 2011 and 2012 CMS submissions indicate there are approximately 1000 <u>active</u> placer mine facilities at any time.</p> <p>Similarly, DEC’s CYs 2009-2013 CMS inspection plan submissions regarding log transfer facilities (LTFs) also deviated from DEC’s interim 20%-per-year goal by focusing inspection proposals only on <i>active</i> LTFs. DEC estimates that approximately six LTFs are active each year.</p> <p>Row E reflects an evaluation that eliminates the LTF and placer mine sectors from the universe and counts as an alternative means to assess DEC’s interim 20%-per-year goal for other traditional non-major facility sectors. Row E reflects a combined Metric 5b1/5b2 measure of 3.1% for</p>

FY 2012 for the more limited DEC non-major universe.

Row F reflects an evaluation of DEC's small wastewater treatment works (WTWs) and seafood processors sectors covered by general permits (GPs). DEC has had inspection authority over these two sectors for over five years. The sectors' 333 facilities represent approximately 75% of all APDES traditional non-major facilities (excluding non-major LTF and placer mine facilities). If all 2013 inspections were completed as proposed, DEC's 5-year inspection coverage rate would have been approximately 55.9% compared to the 5-year goal of 100%. However, preliminary data indicates that DEC did not complete all the 2013 proposed inspections, thus driving their 5 year coverage rate even lower. .

Rows G and H reflect evaluations related to the LTF and placer mine sectors which incorporate DEC's discussion about *active* facilities in comparison to actual total general permit coverage universes.

Based on DEC's CY 2012 CMS, two LTFs will have been inspected in five years of DEC's oversight, or 33% of estimated *active* LTF sites based on DEC's estimate that 5-6 LTF facilities are active at any time. In five years, DEC will have inspected 2.1% of the entire LTF sector based on the OTIS frozen universe.

DEC inspection summary submissions indicate that approximately 27 placer mine inspections were conducted over a three year period, CYs 2011-2013. Based on that count, DEC's total cumulative inspection coverage rate for *active* facilities (i.e. DEC-estimated 1000 active facilities) for 2011-2013 is 2.7% and the average annual coverage rate for *active* facilities over three years is 0.9% per year.

Some causes of the inspection coverage deficiencies in this finding are summarized in Finding 2-1.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
A: 5b1 Inspection coverage of NPDES non-majors with individual permits – Frozen OTIS Data – FY 2012 Only	---	25.6%	2	32	6.3%
B: 5b1 Inspection coverage of NPDES non-majors with individual permits – Corrected Frozen OTIS Data – FY 2012 Only	---	25.6%	2	21	9.5%
C: 5b2 Inspection coverage of NPDES non-majors with general permits – Frozen OTIS Frozen Data – FY 2012 Only	---	5.9%	61	5572	1.1%
D: 5b2 Inspection coverage of NPDES non-	---	5.9%	18	5204	0.3%

	majors with general permits – Corrected Frozen OTIS Data – FY 2012 Only					
	E: Combined 5b1/5b2 Inspection coverage of NPDES non-majors within a limited universe excluding LTF and placer mine sectors – FY 2012 Only	---	---	10	322	3.1%
	F: 5b2 Projected Inspection coverage of NPDES non-major WTWs and seafood processors with general permits 10/31/08-12/31/13 (> five years)	100%	---	186	333	55.9%
	G: 5b2 Inspection coverage of NPDES non-major LTFs with general permits 10/31/08-12/31/13 (> five years)	100%	---	2	95	2.1%
	H: 5b2 Inspection coverage of NPDES non-major placer mines with general permits for 2011-2013 (3 years). National goal is 100% in a five year period.	---	---	27	4818	0.6%
State Response						
Recommendation	The recommendations for Findings 2-1, 2-2 and 2-3 (partially) are combined and addressed in the recommendations under Finding 2-1.					

Element 2 — Inspection Commitments: Inspection Coverage of NPDES Facilities Under Metrics 4a1 – 4a11.

Finding 2-3	Area for State Improvement
<p>Summary</p>	<p>The following six of the nine operative Metric 4a measures are identified as areas for State improvement:</p> <ul style="list-style-type: none"> • Metric 4a1 – Pretreatment Inspections and Audits • Metric 4a2 – SIU Sampling Inspections • Metric 4a3 – POTW SIU Oversight • Metric 4a4 - CSO • Metric 4a5 - SSO • Metric 4a6 – Phase I MS4 • Metric 4a9 – Construction Stormwater <p>Metrics 4a10 and 4a11, CAFOs, are not applicable because the State has no CAFOs.</p> <p>For the other two applicable 4a metrics: DEC exceeded expectations for Metric 4a8, industrial/MSGP stormwater inspections when comparing three years of completed inspections to the EPA CMS goal of 10% of the universe inspected per year; however, DEC only accomplished 71% of its two year inspection coverage goals for this sector. Adherence to CMS goals for Metric 4a7, Phase II MS4, is indeterminate at this time</p>
<p>Explanation</p>	<p>Finding 2-3 focuses on Metrics 4a1-4a11, that is inspection coverage of NPDES facilities covered under individual and general permits excluding major and non-major facilities covered under Metrics 5a1, 5b1 and 5b2.</p> <p>The explanations underlying the individual metric findings cannot always easily be represented by an inspection count (numerator) with a sector universe (denominator) given that some goals/commitments are cumulative or multi-year based; thus, inspection plans may vary considerably year to year. To the extent practical and reasonable, numeric comparisons for some Metric 4a findings are included below. More detailed explanations and related data regarding these various metric determinations are found in Appendix C.</p> <p>Some causes of the inspection coverage deficiencies in this finding are summarized in Finding 2-1. Some of the causes of inspection-related deficiencies for pretreatment related matters are summarized in Finding 2-4 (<i>see also</i> Appendix D, Parts A-D).</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs (10/31/09 – 5/5/12)	100%		1	6	17%
	4a4 Major CSO inspections – one inspection every 3 years	100%		1	2	50%
	4a6 Phase I MS4 audits or inspections	100%		1	2	50%
	4a8 Industrial stormwater inspections CYs 2011 and 2012 – Comparison with DEC CMS annual goals	100%		81	114	71%
	4a9 Phase I and II stormwater construction inspections CYs 2011 and 2012 – Comparison with projected DEC CMS annual goals. See Appendix C.	100%		66	107	62%
State Response						
Recommendation	The recommendations for Findings 2-1, 2-2 and 2-3 (partially) are combined and addressed in the recommendations under Finding 2-1.					

Element 2 — Adherence To and Completion of Program Commitments

Finding 2-4	Area for State Improvement
Summary	<p>The State has serious performance issues under Metric 4b (non-CMS commitments) adhering to and completing various APDES program commitments that are integral to the establishment and implementation of a vigorous APDES compliance and enforcement program and to the ability of EPA to conduct effective oversight of the State's APDES compliance and enforcement program.</p>
Explanation	<p>Finding 2-4 focuses on the degree to which the State is adhering to and completing various key compliance and enforcement commitments in relevant agreements and related APDES program implementation provisions (e.g. APDES authorizing memorandum of agreement, Performance Partnership Agreements, Performance Partnership Grants, integrated work plan). Appendix D contains detailed explanations.</p> <p>In regard to pretreatment, DEC has not completed the state-wide survey of industrial users for purposes of determining significant industrial users (SIUs) that it committed to completing before October 31, 2009. DEC has not developed POTW pretreatment program oversight procedures and DEC inspection and sampling plans. <i>See App. D, Parts A-D.</i> DEC's failure to complete these tasks negatively affects DEC's ability to fully and successfully implement other pretreatment related elements like SIU inspection goals. <i>See Finding 2-3 (Metrics 4a1-4a3).</i></p> <p>DEC does not conduct annual compliance evaluations of major facilities and does not maintain DROPS as a means to track facility compliance, including required facility submittals or corrective actions that result from inspections or enforcement actions. <i>See App. D, Parts E-F.</i></p> <p>DEC does not use DEC's risk-based inspection ranking model to develop annual inspection plans, in part, because relevant data is not entered into DROPS. DROPS has not been set up yet to accept the data that is needed to generate the facility-ranked, risk-based reports. <i>See App. D, Part G.</i></p> <p>DEC deviated from Program Description commitments regarding APDES inspection reports. During an EPA oversight inspection, EPA discovered that DEC had implemented a practice of preparing only a post inspection letter instead of formal inspection reports as required by EPA NPDES guidance and as committed to by DEC. DEC acknowledged this practice was not in accord with its Program Description. <i>See App. D, Part H.</i></p> <p>DEC deviated from its Program Description and internal policies by using</p>

	<p>DEC staff, without inspection credentials, to conduct APDES inspections of a major facility. <i>See App. D., Part I.</i></p> <p>DEC has not established written procedures with its Department of Law (DOL) to facilitate efficient and effective compliance review and enforcement implementation actions. <i>See App. D., Part J.</i></p> <p>Other commitment deficiencies include: (1) lack of cross-training as a means to increase the APDES program's effectiveness in the field; (2) not routinely making the requisite submittals to EPA regarding completed enforcement actions and facility violations; and (3) not conducting timely enforcement regarding annual report submission violations under placer mine general permits. <i>See App. D, Parts K-N.</i></p>
State Response	
Recommendation	<p><u>DEC will implement 5 actions in response to this finding.</u></p> <p><u>Division of Water Letter.</u> By May 1, 2014, the DEC Division of Water Director shall provide EPA with a letter and copies of any applicable SOPs or internal written policies that address the following items:</p> <ul style="list-style-type: none"> • <u>APDES Inspector Training/Credentials and Inspection Reporting (App. D Part I).</u> Explain what procedures are implemented to ensure APDES inspections are conducted by trained and credentialed APDES inspectors and that APDES inspection completion reports accurately reflect APDES inspections conducted by trained and credentialed APDES inspectors. Confirm whether DEC has changed field practices to ensure only credentialed inspectors are conducting inspections. • <u>Inspection Report Practices (App. D, Part H).</u> Identify the reasons why the post-inspection letter (i.e. no formal inspection report) practice was implemented. Discuss the actions implemented to meet Program Description commitments and related EPA guidance on the completion of formal inspection reports and procedural commitments in the MOA, Program Description, etc. regarding timely communications to EPA regarding proposed changes in APDES procedures and practices. Confirm whether DEC has changed practices to ensure inspection reports are developed. <p><u>State-Wide Pretreatment Industrial Survey and Pretreatment</u></p>

Program SOPs (App. D, Parts A-D). By October 1, 2014, DEC shall complete the state-wide industrial user (IU) survey in all non-delegated POTWs and have made final SIU determinations.

- By May 15, 2014, DEC shall submit a survey plan to EPA for review and comment that includes the state-wide survey methods (including the factors and methods used to identify and target IUs state-wide) and a critical path schedule with interim deadlines to meet the final October 1 deadline. The plan must include a detailed timeline and procedures for DEC's periodic review and updating of the initial IU inventory.
- By December 1, 2014, DEC shall complete development and implementation of SOPs to implement its pretreatment program in accordance with Program Description commitments. These SOPs must include the inspection and sampling plan for POTW audits/PCIs and IU inspections.
- By December 1, 2014, DEC shall submit its SIU determinations, including the list of SIUs that will be included in DEC's CY 2015 CMS inspection plans, and its pretreatment program SOPs to EPA.

Transmit Copies of Enforcement Actions (App. D, Part L) Starting immediately, transmit to EPA copies of all enforcement actions ranging from compliance letters to administrative and judicial actions.

Provide quarterly written summaries to EPA of facility specific violations and enforcement responses (App. D, Part M) Starting immediately, DEC will provide a quarterly summary document that details facility specific violations and DEC's enforcement response, including dates.

Program Improvement Plan – Appendix A. The PIP identifies the action items, tasks, timelines and critical path schedules that DEC will implement to address the following non-CMS program commitment issues and related recommendations:

- Annual Major Facility Compliance Evaluations (App. D, Part E)
- DROPS Modifications and SOPs (App. D, Parts F-G)
- DEC/DOL SOPs (App. D, Part J)
- Cross-Training (App. D, Part K)

Placer Mine Annual Report Enforcement (App. D, Part N). The DEC's CY 2014 CMS and inspection plan contains the action items and corrective

	action addressing this issue. With regard to this item, no further actions are identified in this report or in the PIP.

Element 2 — Inspections: Timeliness and Sufficiency of Inspection Reports

Finding 2-5	Area for State Improvement - Report Timeliness																							
Summary	The State’s performance regarding the timeliness of inspection report completion is an area for state improvement.																							
Explanation	<p>Finding 2-5 focuses on Metric 6b, the timeliness of inspection report completion.</p> <p>Metric 6a, the completeness and sufficiency of inspection reports to determine compliance at the facility, was also assessed. The State meets expectations for the completeness and sufficiency of inspection reports to determine facility compliance.</p> <p>In regard to timeliness, the State’s policy is to complete and transmit a final inspection report to the inspected facility’s responsible party within 30 days of completion of a comprehensive evaluation inspection and within 45 days of a compliance sampling inspection. The average time for completion was 86 days.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>6a Inspection reports complete and sufficient to determine compliance at the facility</td><td>100%</td><td></td><td>17</td><td>18</td><td>94.4%</td></tr><tr><td>6b Inspection reports completed within prescribed timeframe</td><td>100%</td><td></td><td>4</td><td>17</td><td>23.5%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		17	18	94.4%	6b Inspection reports completed within prescribed timeframe	100%		4	17	23.5%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		17	18	94.4%																			
6b Inspection reports completed within prescribed timeframe	100%		4	17	23.5%																			
State Response																								
Recommendation	Program Improvement Plan – Appendix A. The PIP identifies the action items, tasks, timelines and critical path schedules that DEC will implement to address the inspection report timeliness issues identified in this finding.																							

Element 3 — Violations

Finding 3-1	Area for State Improvement – Accuracy of Determinations																	
Summary	The State’s accuracy in compliance determinations, Metric 7e, based on inspection reports is an area for state improvement.																	
Explanation	<p>Finding 3-1 focuses on the accuracy of the State’s violation and compliance determinations based on inspection reports. Metric 7e, inspection reports reviewed that led to accurate compliance determinations, is an area for state improvement.</p> <p>In regard to Metric 7e, SEVs identified in two inspection reports were not included in enforcement documents (e.g. NOVs) that were issued based on the inspection reports. In other situations, there was no documentation available to make the compliance determination or inconsistencies in documentation of inspection results. <i>See</i> Row D.</p> <p>Other metrics were reviewed and evaluated. Metric 7a1 identified only one major facility (Anchorage/ADOT MS4) with a single-event violation (SEV) reported in ICIS based on non-automated violations arising from inspections and compliance monitoring. The SRF file review confirmed that the SEV had been correctly determined as non-significant noncompliance. Metric 8c is not applicable because there was no reportable SNC. <i>See</i> Rows A, H and I.</p> <p>Metric 7d1 as reflected in the frozen OTIS data, contained inapplicable facilities. The corrected Metric 7d1 is 46.4%. <i>See</i> Rows B and C.</p> <p>Metrics 7f1 and 7g1 are for data verification purposes in deciding file reviews. Metric 7f1 as reflected in the frozen OTIS data contained inapplicable facilities. Row E reflects corrected data.</p> <p>Metric 8a2, the percentage of major facilities in SNC, as reflected in the frozen OTIS data contained inapplicable facilities. The corrected Metric 8a2 is 6.25%. <i>See</i> Row G.</p> <p>Metric 8b1, the accuracy and timeliness of its significant noncompliance determinations, was also assessed. The State met expectations with regard to the only facility under this metric where the appropriate SNC/Non-SNC determination was made on identified SEVs. <i>See</i> Row H.</p>																	
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>A: 7a1 Number of major facilities with single</td><td>---</td><td>---</td><td>---</td><td>---</td><td>1</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	A: 7a1 Number of major facilities with single	---	---	---	---	1
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
A: 7a1 Number of major facilities with single	---	---	---	---	1													

	event violations					
	B: 7d1 Major facilities in noncompliance – Frozen OTIS Data	---	60.3%	18	36	50%
	C: 7d1 Major facilities in noncompliance – Corrected Frozen OTIS Data	---	60.3%	13	28	46.4%
	D: 7e Inspection reports reviewed that led to an accurate compliance determination	100%	---	13	17	76.5%
	E: 7f1 Non-major facilities in Category 1 noncompliance – Corrected Frozen OTIS Data	---	---	---	---	6
	F: 7g1 Non-major facilities in Category 2 noncompliance	---	---	---	---	19
	G: 8a2 Percentage of major facilities in SNC – Corrected Frozen OTIS Data	---	20.6%	3	48	6.25%
	H: 8b1 SEVs accurately identified as SNC or non-SNC at major facilities	100%	---	1	1	100%
	I: 8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	---	0	0	NA
State Response						
Recommendation	<u>Program Improvement Plan – Appendix A.</u> The PIP identifies the action items, tasks, timelines and critical path schedules that DEC will implement to address the issues identified in this finding regarding compliance determinations based on inspection reports.					

Element 4 — Enforcement

Finding 4-1	Area for State Improvement
Summary	<p>The State does not consistently take timely and appropriate enforcement actions. Many reviewed files did not contain adequate documentation regarding verification of a facility's compliance status after completion of the enforcement action. The State does not initiate and complete formal enforcement actions in a timely manner, impeding the ability to initiate and complete more enforcement actions over time.</p>
Explanation	<p>Finding 4-1 addresses Metrics 9a, 10a1 and 10b and focuses on DEC's effectiveness in taking timely and appropriate enforcement and using enforcement to return facilities to compliance. Finding 4-1 also focuses on the significant time to develop, initiate and complete formal enforcement cases. Because of the low number of penalty enforcement cases for the 2012 review year (see Finding 5-1), EPA also looked at the 5 year history of formal enforcement by DEC for APDES to assess program performance. The explanations below summarize EPA's findings based both on the file reviews and on the 5 year history of the program.</p> <p>Background. In the first five years of APDES program implementation (i.e., October 31, 2008 – October 31, 2013), DEC took a total of 10 formal enforcement actions against six facilities.</p> <p>Only three of these 10 formal actions included civil penalty settlements for past violations. One of the three penalty actions was completed using DEC's expedited settlement offer (ESO) process. The ESO process is a penalty-only settlement (i.e. no injunctive relief or related corrective action schedule). The other two penalty action settlements were incorporated into compliance orders by consent (COBCs) which typically also include corrective actions and related compliance schedules.</p> <p>Nine of the 10 formal actions used COBCs. Six of the nine COBCs were directed at two facilities. Two COBCs were directed at one seafood processing facility and four COBCs were directed at one major mining facility. The latest COBC with the major mining facility did not contain a specific, date-certain deadline for the facility's compliance with applicable APDES permit effluent limitations.</p> <p>File Reviews: Returning to Compliance. EPA reviewed 18 files selected under the SRF protocol. Of these, eight files had adequate documentation to demonstrate that DEC's actions returned or will return the facility to compliance.</p>

Five of the 10 files with inadequate documentation used Notices of Violation (NOV) that did not conform to the requirements in DEC's Enforcement Manual (6th Edition, October 2005). DEC's Enforcement Manual states that the NOV contents must include specific time frames for the violator's submission of a written report explaining the steps that were required to correct the problem, the steps that will be taken to prevent similar violations in the future and a provision that establishes a clear time frame for clean-up or repair of the problem. Several of the reviewed files contained NOVs that did not request the violator to submit the requisite written reports, thus contributing to the lack of adequate documentation demonstrating the facility's return to compliance.

DEC's Enforcement Manual emphasizes the need to verify that all terms and conditions of the enforcement action have been met. The Enforcement Manual provides that subsequent to that verification, the staff should draft and with a manager's signature, issue an Enforcement Closeout Letter and the Manual includes a closeout letter template. Several of the reviewed files did not have documentation verifying that all terms and conditions of the enforcement action had been completed. These reviewed files did not routinely contain DEC-generated documentation (e.g. close-out letter) that all enforcement action terms and conditions were met.

Background: Timely Enforcement. DEC's APDES Enforcement Response Guide (ERG) (May 2008) indicates there is no specific timeframe established to initiate and complete an enforcement response. The ERG further states the general guideline that within 45 days of identifying a violation, the appropriate response will be determined and the action initiated, or if not initiated, documented.

EPA guidance provides that administering agencies are expected to take formal enforcement action before significant noncompliance is identified in a second calendar quarter official report (e.g. QNCR). Historically, if the facility was identified in the second official report because the same significant noncompliance is continuing, the facility was placed on EPA's Watch List.* The Watch List tracked violations at major facilities that had not received timely and appropriate enforcement action.

*As of December 2013, EPA's Watch List is currently unavailable as EPA reviews options for its future use.

DEC's formal enforcement action procedures generally do not result in the completion of timely enforcement actions. Delays in completing timely formal actions results in fewer actions being completed overall as staff prioritize limited time and resources for pending actions and delay development of new appropriate actions. Examples of formal cases with

lengthy, ongoing processes are described below. These examples are provided as background, rather than as a result of the SRF file-review.

- DEC had a formal penalty action in development against a seafood processing facility since September 2011. An ESO was finally sent to the respondent in April 2013 and after an initial exchange of communications (not formal negotiations), DEC terminated the action in November 2013.
- A major POTW was on the EPA Watch List in late 2010 and early 2011. Based in part on a November 2010 inspection, DEC issued an NOV in March 2011 and has been developing a formal action since approximately July 2011. The parties have been in discussion regarding POTW remedial work; however, as of November 1, 2013, DEC had not yet prepared and sent an initial draft COBC or initiated formal negotiations on a final compliance schedule and a civil penalty settlement for past violations.
- A major mining facility was on the EPA Watch List in late 2011 and early 2012. Since 2008, DEC has completed four COBCs with this facility. The 2011 and 2013 COBCs did not contain specific, date-certain deadlines for the facility discharge's compliance with applicable final permit effluent limitations.
- DEC began developing a formal action (i.e. COBC) with a significant non-major POTW in January 2012 based in part on the POTW's failure to comply with its permit's five-year compliance schedule resulting in ongoing ammonia effluent limitation violations. As of November 1, 2013, DEC had not yet sent a draft COBC to the POTW and initiated formal negotiations on a revised final compliance schedule. DEC indicated that a negotiation meeting was to be scheduled for January 2014.
- DEC began developing a formal action (i.e. COBC) in late 2010 for a large company's construction stormwater general permit violations. (b) (7)(A)

[REDACTED]

[REDACTED]

[REDACTED]

File Review: Timely Enforcement. Seven files reviewed by EPA had documentation showing the action did not adhere to the DEC ERG's guideline time frame. An eighth reviewed file did not contain documentation showing that the respondent replied to a DEC compliance notification email.

The frozen OTIS data for Metric 10a identified one major facility but it is not applicable to the State. The EPA completed this enforcement action because it was initiated before the facility transferred to DEC's administration.

The following bullets identify some factors that contribute to or cause the situations identified in Finding 4-1 and Element 5:

- During 2008-2011, the Division of Water did not acknowledge that formal enforcement was an integral component of a comprehensive, effective NPDES permit program and this position was not conducive to the development and implementation of a vigorous enforcement program using formal enforcement actions.
- DEC lacks an adequate complement of trained inspectors and other resources (e.g. inspection travel budget) to implement a vigorous C&E program that meets DEC Program Description commitments and EPA CMS goals.
- DEC's Program Description provides that a compliance committee (CC) meeting must be held in order for a case to be considered for a formal action. For approximately four years (i.e. 2008—2011), routine CC meetings were not scheduled or held.
- DEC's APDES Enforcement Response Guide does not contain specific timeframes or goals for initiating and completing enforcement actions.
- DEC C&E program capacity building has been delayed and prolonged, due in part to the lack of standard enforcement procedures, document templates, and other contributing factors discussed herein.
- The DEC C&E program does not have adequate tools as originally committed to by DEC to make compliance and enforcement action processes efficient. For example, DROPS was apparently designed to inventory a permittee's reporting requirements in permits, orders, inspection results, compliance follow-up and enforcement actions. DROPS was also supposed to be capable of generating a risk-based inspection ranking report. DROPS apparently cannot support these functions as originally committed. Consequently, C&E staff must devise other means to track and process data (e.g. track permittee

	submissions on staff's individual Outlook).					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	---	8	18	44.4%
	10a1 Major facilities with timely action as appropriate FY 2012	98%	---	0	0	NA
	10b Enforcement responses reviewed that address violations in a timely and appropriate manner	100%	---	9	17	52.9%
State Response						
Recommendation	<p><u>Complete Enforcement Actions in CY2014</u>—By January 1, 2015, DEC shall complete the 10 formal enforcement actions currently in DEC's pipeline, as identified by EPA Region 10. By May 1, 2014, DEC shall submit a summary outline to EPA that identifies the tasks and critical path schedules for each action that will be implemented to meet the CY 2014 deadline. DEC will report case progress on a monthly basis to EPA, with an assessment on whether the action will be completed in CY 2014. If at any time EPA determines there is a potential that an action will not be completed in CY 2014, DEC and EPA will discuss the need for a change in agency lead for the case. This recommendation is also included under the Finding 5-1 recommendations.</p> <p><u>Establish Enforcement Procedure SOPs and Time Frame Goals.</u> This corrective action/recommendation has two parts:</p> <ol style="list-style-type: none"> Evaluation of APDES C&E procedures. DEC will complete an evaluation of its APDES C&E procedures to identify performance limiting factors (PLFs) and process improvements regarding the timely development, initiation and completion of formal enforcement actions. The evaluation must recommend remedial or corrective measures and/or procedural improvements regarding any identified PLFs DEC may also want to consider potential tools to create efficiencies, such as administrative penalty authorities or field citations. DEC will apprise EPA of the evaluation results, including remedial and corrective measures and procedural improvements, by June 1, 2014. 					

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2. **Develop and Implement Enforcement Procedure SOPs and Time Frame Goals.** DEC will develop and implement written SOPs and time frame goals and submit these to EPA for review and comment by July 1, 2014 in order to:
- Initiate and complete informal and formal enforcement actions, including actions using COBCs, compliance orders and ESOs;
 - Schedule routine compliance committee meetings for the purposes of formal action initiation and development and a written escalation policy to assist staff in implementing the ERG and determining types of cases for formal action;
 - Develop written procedures on the use of the expedited settlement offer process including the circumstances for its use;
 - Develop written procedures to ensure adherence to the ERG's range of responses based on identified fact circumstances and for response selection and penalty development taking into account initial date of violation and subsequent violation periods; and
 - Streamline and expedite internal review procedures with review time frame goals and internal template forms.

Program Improvement Plan – Appendix A The PIP identifies the action items, tasks, timelines and critical path schedules that DEC will implement to address, in part, the issues identified in this finding related to Metric 9a regarding enforcement responses that returned or will return a violating source to compliance. These recommendations/corrective actions are also included under the Finding 5-1 recommendation.

Element 5 — Penalties

Finding 5-1	Area for State Improvement																													
Summary	The State did not complete sufficient formal penalty actions for EPA to conduct a detailed evaluation of its penalty development and settlement documentation, procedures and history. This is an area for State improvement.																													
Explanation	<p>Finding 5-1 addresses DEC’s performance regarding the completion of a minimum number of penalty actions on an annual basis to conduct SRF review. DEC’s initiation and completion of penalty actions is an area for State improvement.</p> <p>The State has taken three penalty actions in the first five years of the APDES program (i.e. October 31, 2008 – October 31, 2013). DEC completed two of its three penalty actions in FY 2012.</p> <p>DEC has not taken sufficient penalty actions in any one fiscal or calendar year in the past five years so as to provide the minimum number of penalty actions needed as a sufficient base of information to adequately assess DEC’s performance regarding the substantive development and completion of penalty actions. The SRF file selection protocol requires file reviewers to select a minimum of five penalty actions for FY 2012 file selection and review. EPA could only select two penalty action files.</p> <p>Metrics 11a and 12b regarding the State’s two penalty actions were assessed. The two penalty actions included penalty calculations that considered gravity and economic benefit and the files documented that the penalties had been collected.</p> <p>See Finding 4-1 for a discussion of some causes regarding initiation and completion of formal penalty actions.</p>																													
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td><td>100%</td><td>---</td><td>2</td><td>2</td><td>100%</td></tr><tr><td>12b Penalties collected</td><td>100%</td><td>---</td><td>2</td><td>2</td><td>100%</td></tr><tr><td>Penalty Actions for SRF File Selection and Review</td><td>100%</td><td>---</td><td>2</td><td>5</td><td>40%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	---	2	2	100%	12b Penalties collected	100%	---	2	2	100%	Penalty Actions for SRF File Selection and Review	100%	---	2	5	40%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	---	2	2	100%																									
12b Penalties collected	100%	---	2	2	100%																									
Penalty Actions for SRF File Selection and Review	100%	---	2	5	40%																									
State Response																														

Recommendation	The Finding 4-1’s Recommendation is incorporated herein by reference.																	
Element 5 — Penalties																		
Finding 5-2	Metric 12a: Area for State Improvement																	
Summary	One of the State’s two penalty actions did not adequately document the difference between the initial and final assessed penalty.																	
Explanation	<p>This Finding 5-2 focuses on Metric 12a, documentation of rationale for the final value assessed compared to the initial value assessed.</p> <p>One of two penalty actions in FY 2012 had adequate documentation explaining the rationale between the initial and final assessed penalty.</p> <p>DEC used its expedited settlement offer (ESO) process in the other action. The ESO process uses the authority and assistance of the Alaska Department of Law (DOL). DOL’s ESO letter to the respondent offered a settlement penalty of \$14,300. The action was settled for \$12,000 but the DEC file contained no written rationale/explanation for DEC’s departure from the initial assessed penalty of \$14,300.</p> <p>The lack of documentation explaining the penalty differences is caused, in part, by the lack of DEC SOPs for its formal enforcement procedures, including the ESO process, and the lack of written procedures between DEC and DOL regarding the coordination of enforcement cases. <i>See e.g.</i>, Finding 2-4; Appendix D, Part J.</p>																	
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>12a Documentation of the difference between initial and final penalty and rationale</td><td>100%</td><td>---</td><td>1</td><td>2</td><td>50%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation of the difference between initial and final penalty and rationale	100%	---	1	2	50%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
12a Documentation of the difference between initial and final penalty and rationale	100%	---	1	2	50%													
State Response																		
Recommendation	<u>Program Improvement Plan – Appendix A.</u> The PIP identifies the action items, tasks, timelines and critical path schedules that DEC will implement to address the issues identified in this finding regarding adequate documentation about the difference between the initial and final assessed penalty.																	

CWA-NPDES Program Appendices

- A: DEC APDES Compliance and Enforcement Program Improvement Plan
- B. Inspection Resource Analysis
- C. Metric 4A Inspection Coverages
- D. Metric 4b Program Commitments